

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SELECT RETRIEVAL, LLC,

Plaintiff,

v.

PROVIDE COMMERCE, INC.,

Defendant.

Civil Action No. \_\_\_\_\_

**JURY TRIAL REQUESTED**

**COMPLAINT**

Plaintiff Select Retrieval, LLC ("Select Retrieval" or "Plaintiff"), by way of Complaint against Defendant Provide Commerce, Inc. ("Provide Commerce" or "Defendant"), hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

**THE PARTIES**

2. Select Retrieval is a limited liability company organized under the laws of Texas with its principal place of business at 8416 Old McGregor Road, Waco, TX 76712.

3. Provide Commerce is a corporation organized under the laws of Delaware with its principal place of business at 4840 Eastgate Mall, San Diego, CA 92121.

**JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject

matter of this action under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

5. This Court has personal jurisdiction over Defendant for at least the following reasons: (i) Provide Commerce has committed acts of patent infringement in this District and elsewhere in the United States and (ii) Provide Commerce regularly does business or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from products and/or services provided to individuals in this District and in this State.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,128,617**

6. Select Retrieval repeats and re-alleges the allegations of paragraphs 1 through 5 as if fully set forth herein.

7. On October 3, 2000, United States Patent No. 6,128,617 (hereinafter referred to as the "'617 Patent"), entitled DATA DISPLAY SOFTWARE WITH ACTIONS AND LINKS INTEGRATED WITH INFORMATION, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '617 Patent is attached as Exhibit A to this Complaint.

8. Select Retrieval is the assignee and owner of the right, title, and interest in and to the '617 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

9. Provide Commerce is and has been directly and indirectly infringing one or more claims of the '617 Patent in this judicial district and elsewhere in the United States at least by making and/or using one or more websites, including but not limited to, [www.gifts.com](http://www.gifts.com), operated using a method and a computer readable medium that embody the inventions claimed in the '617 Patent. The '617 Patent covers a method and/or system that enable search functions and

data retrieval, including website features such as category and feature based product searches. Such data retrieval is achieved by increasingly refined searches that retrieve progressively detailed information about the products that Provide Commerce sells on its website. Provide Commerce's website provides the progressively refined search functionality utilizing infringing methods and/or systems so that its users and/or customers have the ability to select from a series of categories, options, and/or other product features such as, but not limited to, product and/or information type, price, color, brand, and size. Such acts constitute infringement under at least 35 U.S.C. § 271(a).

10. On September 13, 2011, Select Retrieval filed suit against Liberty Interactive Corporation,<sup>1</sup> Provide Commerce's parent company, for infringement of the '617 Patent related to Liberty Interactive Corporation's use of products and services on the Internet using methods and instrumentalities that embody the inventions claimed in the '617 Patent in an action styled: *Select Retrieval, LLC v. AmeriMark Direct LLC, et al.*, Case No. 1:11-cv-00812, pending in the United States District Court for the District of Delaware ("the Delaware action"). On December 2, 2011, Select Retrieval filed its First Amended Complaint against Liberty Interactive Corporation in the Delaware action. On information and belief, Defendant Provide Commerce has had actual knowledge of the '617 Patent since at least December 15, 2011, when Liberty Interactive Corporation was served with Select Retrieval's First Amended Complaint in the Delaware action.

11. Upon information and belief, since at least December 15, 2011, Provide Commerce has committed and continues to commit acts of contributory infringement of the '617

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<sup>1</sup> Select Retrieval initially filed suit against Liberty Media Corporation. At Liberty Media Corporation's counsel's request, the parties filed a stipulation to inform the Court that Liberty Media Corporation had changed its name to Liberty Interactive Corporation and to request that the name be changed in the pleadings and docket.

Patent under 35 U.S.C. § 271(c) in that Provide Commerce has made and/or used, or continues to make and/or use a method and/or a computer readable medium, including on its website www.gifts.com, which have no substantial non-infringing uses, and provides such method and/or computer readable medium to its customers and users of its website(s), whose use of such method and/or computer readable medium constitutes direct infringement of the '617 Patent.

12. Upon information and belief, since at least December 15, 2011, Provide Commerce has induced and continues to induce others to infringe the '617 Patent under 35 U.S.C. § 271(b) by, among other things, actively and knowingly aiding and abetting others to infringe, including but not limited to customers and users of its website(s), such as www.gifts.com, whose use of such method and/or computer readable medium constitutes direct infringement of the '617 Patent.

13. Upon information and belief, Provide Commerce's infringement of the '617 Patent since at least December 15, 2011, has been and continues to be willful and deliberate.

14. Because of Provide Commerce's infringement, inducement of infringement, contributory infringement, and willful infringement of the '617 Patent, Select Retrieval has suffered damages and will continue to suffer damages in the future.

#### **JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Select Retrieval demands a trial by jury on all issues triable as such.

#### **PRAYER FOR RELIEF**

WHEREFORE, Select Retrieval respectfully demands judgment for itself and against Defendant as follows:

A. An adjudication that Defendant has infringed the '617 Patent;

B. An award of damages to be paid by Defendant adequate to compensate Select Retrieval for its past infringement of the '617 Patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and enhanced damages for any willful infringement as justified under 35 U.S.C. § 284 and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Select Retrieval of such further relief at law or in equity as the Court deems just and proper.

Dated: November 9, 2012

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